

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 201 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

and MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

COMMISSIONER OF INCOME-TAX

Versus

CHANDRAKANT M. SHAH

Appearance:

MR RP BHATT for Petitioner

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE KUNDAN SINGH

Date of decision: 27/04/98

ORAL JUDGEMENT

The Income Tax Appellate Tribunal has referred the following question which pertains for the assessment years 1985-86 and 1986-87, for the opinion of this Court under Section 256(1) of the Income Tax Act.:

1. "Whether on the facts and in the

circumstances of the case and in law the Tribunal was correct in holding that the incentive bonus commission received by the assessee, who an employee of Life Insurance Corporation of India, from the L.I.C. did not constitute part of 'salary' and that it was assessable as income from other source.

2. "Whether on facts and in circumstance of the case of the assessee and in law the I.T.A.T. was correct in allowing deduction at 40% from said incentive bonus commission, as expenditure for earning the said income, even though the assessee had not led the evidence to prove that in fact expenditure to that extent had been incurred?"

Identical question came up for our consideration in ITR No.54/93 and other cognate matters with which the entire group was argued and for the reasons given by us in our judgement dated 27.4.1998, we hold that the Tribunal was right in holding that the assessee was entitled for deduction of the incentive bonus as expenses out of the amount of incentive bonus received by the assessee - Development Officer from the Life Insurance Corporation, but only to the extent of reimbursement of expenses actually incurred upto the maximum limit of 30 per cent of the incentive bonus earned by the assessee. The questions referred to us is accordingly answered in the affirmative against the Revenue and in favour of the assessee.